

-- REMARKS --

Claims 22-26 have been added, without adding new matter. Support for claims 22-26 is found, inter alia on pages 6-8 of the specification.

A. Claims 1, 2, 4-12, and 15-19 were rejected under 35 U.S.C. § 103(a), as unpatentable over Alfieri in view of Liron in view of Bereiter

The rejection of claims 1, 2, 4-12, and 15-19 is traversed.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *See, e.g.* MPEP § 2143.

At a minimum, Alfieri in view of Liron in view of Bereiter fail to teach or suggest providing a map as a result of the correlation such that the map includes a first cluster of the plurality of clusters for supporting the service on the network as claimed in claim 1, that the engine is further operable to provide a map representative of each node cluster in compliance with at least one performance rule as related to the service and to allocate the service to one of the complying node clusters as claimed in claim 9, the means for correlating operable to provide a map representative of each node cluster in compliance with at least one performance rule as related to the service and to allocate the service to one of the complying node clusters as claimed in claim 15, or an engine operable to provide a map representative of each node cluster in compliance with at least one performance rule as related to the service and to allocate the service to one of the complying node clusters as claimed in claim 16.

The Examiner's citation to Alfieri column 9 line 56 to column 10, line 5 is misplaced. At most, Alfieri discloses the need to *choose* a node, but Alfieri does not teach providing a map nor any details regarding that map. At most, Liron teaches that performance data representative of a set of physical characteristics may be collected, but does not teach using this performance data to show a map or to assign services based on the map. Even further, at most Bereiter teaches showing a map, but not that the map is a result of a correlation between properties of the node clusters and a performance rule. Since no references cure this defect, the rejection of claims 1 and 9 must fall.

Furthermore, claims 4-8 depend from independent claim 1 and include all of the elements and limitations of independent claim 1; claims 10-12 depend from independent claim 9 and include all of the elements and limitations of independent claim 9; and claims 17-19 depend from independent claim 16 and include all of the elements and limitations of independent claim 16. It is therefore respectfully submitted by the Applicants that claims 4-8, 10-12, and 17-19 are allowable over Alfieri in view of Liron for at least the same reason as set forth above with respect to independent claims 1, 9, 15 and 16. For the above stated reasons, withdrawal of the rejection of claims 1, 4-12 and 15-19 under 35 U.S.C. §103(a) as being unpatentable over the Alfieri in view of Liron is therefore respectfully requested.

- B.** Claims 14 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Alfieri in view of Liron and in further view of Johnson

The Applicants respectfully traverse the 35 U.S.C. §103(a) rejection of claims 14 and 20. Applicants presume the Examiner intended to reject claims 14 and 20 in view of Bereiter as well as Alfieri, Liron, and Johnson, and respond as if this intention had been expressed in the office action. To the extent that Bereiter is not included in the rejection, the rejection fails for substantially the reasons cited by the Examiner in the rejection – Alfieri and Liron fail to teach or suggest each element of claims 9 or 16, and since Johnson does not cure these defects, the rejection must fall.

As the Examiner is well aware, in order to make a *prima facie* case of obviousness under § 103(a), all of the *claimed* elements of the invention must be taught or suggested by the prior art (MPEP § 2143.03).

Claim 14 depends from independent claim 9 and claim 20 depends from independent claim 16, both claims including all of the limitations of their respective independent claim. Thus, claims 14 and 20 are allowable over Alfieri in view of Liron and in further view of Johnson for at least the same reasons as stated above for claims 9 and 16.

Furthermore, as the Examiner is well aware, where an independent claim is non-obvious, any claim depending therefrom is also non-obvious. *See*, MPEP 2143. Applicants, therefore, request the withdrawal of the rejection of dependent claims 14 and 20 under §103(a).

SUMMARY

The rejections of the pending claims have been obviated by the above amendment and remarks. The Applicants respectfully submit that claims 1, 4-12, 14-20, and 22-26 fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing amendments and remarks, favorable consideration and early passage to issue of the present application are respectfully requested.

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